

No. H110166  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE RECEIVERSHIP OF  
682202 B.C. LTD.**

**SECOND REPORT OF ALVAREZ & MARSAL CANADA INC.  
IN ITS CAPACITY AS RECEIVER AND MANAGER  
OF 682202 B.C. LTD.**

**APRIL 2, 2013**

**IN THE MATTER OF THE RECEIVERSHIP OF**

**682202 B.C. LTD.**

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## 1.0 INTRODUCTION

- 1.1 Pursuant to the March 9, 2011 order of the Supreme Court of British Columbia (the "**Receivership Order**"), Alvarez & Marsal Canada Inc. (the "**Receiver**" or "**A&M**") was appointed Receiver and Manager of 682202 B.C. Ltd. d.b.a. Cedarbrooke Chateau ("**Cedarbrooke**", "**682**" or the "**Company**").
- 1.2 The petitioning creditor, 1397225 Ontario Limited ("**139**"), filed the notice of application on February 8, 2011 for the Receivership Order. 139 subsequently assigned the debt and security to 2242229 Ontario Inc. ("**224**" or the "**Lender**"). The amount owing to the Lender was approximately \$34.7 million as at December 31, 2012.

## 2.0 PURPOSE OF REPORT

- 2.1 The purpose of this report (the "**Second Report**") is to provide the following:
- a) a summary of the Receiver's activities since the first report of the Receiver, dated May 10, 2011 ("**First Report**");
  - b) an update of 682's estimated financial position and the status of its operations as at the date of this report;
  - c) a summary of the proposed bidding process to sell the assets and operations of 682 ("**Sales Process**"); and
  - d) a summary of the professional fees and disbursements, including applicable taxes, of the Receiver and its legal counsel, Gowling Lafleur Henderson LLP ("**Gowling**"); and
  - e) the Receiver's recommendations with respect to its Notice of Application seeking orders (i) approving the Sale Process with respect to the assets and operations of 682, (ii) approving the Receiver's professional fees and disbursements including applicable taxes, as well as the fees and disbursements, including applicable taxes, of Gowling and (iii) approving payments after maintaining sufficient surplus cash as determined by the Receiver to 224 up to a maximum amount of \$5 million or such other further amount as determined by subsequent approval of the Court.
- 2.2 This report does not include detailed information that may be considered competitively sensitive related to the Company's business, nor the operating marketing strategy and cash flow budget which the Receiver continues to review and develop as a part of the administration of the receivership.

### 3.0 RECEIVER'S ACTIVITIES SINCE THE FIRST REPORT

- 3.1 Cedarbrooke owns a 138 unit senior residence complex located in Mission, B.C. ("**Cedarbrooke Chateau**") which offers independent living services, including dining, housekeeping and laundry as well as various amenities such as spa, gym and pool. The construction of the property was completed in and around March 2009. Kingsway Arms Management (at Cedarbrooke Chateau) Inc. ("**Kingsway**") entered into a management agreement dated January 31, 2007 with Cedarbrooke (the "**Management Agreement**") "*...to oversee the construction management of a senior residence complex and to manage and operate the Business pursuant to the terms contained herein*". Kingsway advised the Receiver that it was ceasing to provide management services as of March 11, 2011 and as such, the Management Agreement was terminated.
- 3.2 As noted in the First Report, the Receiver's initial activities have been focused on stabilization of the operations during the transition of the management of the senior residence complex from Kingsway to the Receiver. Subsequent activities as noted below have related to on-going operations and management of the Cedarbrooke Chateau.

#### Employees

- 3.3 As at March 9, 2011, there were no employees on record for 682. The Receiver understands that the Cedarbrooke staff were employed by Kingsway at the time the Receivership Order was granted and were terminated upon the Receiver's appointment. On March 11, 2011, the Receiver distributed retainer letters to 26 individuals which the Receiver retained effective March 12, 2011 (herein collectively referred to as "**Cedarbrooke Management and Staff**" and management members are herein referred to as "**Cedarbrooke Management**")
- 3.4 The Receiver has continued to enter into new employment agreements with Cedarbrooke Management and Staff as additional resources are required to attend to the increased number of residents over the past two years as well as to replace employees who have resigned. As at March 1, 2013 there were 33 full and part time Cedarbrooke Management and Staff members.
- 3.5 The Receiver attends the premises from time to time to meet with Cedarbrooke Management and Staff. Conference calls and telephone discussions with Cedarbrooke Management occur on a regular weekly basis for purposes of discussing on-going operational and administrative matters.

#### Residents

- 3.6 At the time of A&M's appointment on March 9, 2011, there were 64 units occupied (or 46%). As at April 1, 2013, there are now 103 units occupied (or 75% occupancy) with 125 residents. Over

the past two years there has been a number of new move-ins (65) which has been partially offset by the number of move-outs (26). The move outs primarily related to residents requiring higher level of care or resulted from residents who passed away.

- 3.7 The Receiver, with assistance from its legal counsel, revised the occupancy agreements which existed prior to the date of the Receivership Order and were assigned by Kingsway to the Receiver. The Receiver entered into the revised occupancy agreement with each of the residents in April 2011 and any new residents are required to execute an occupancy agreement with A&M as Receiver. The occupancy agreement indicates that the Receiver will eventually be selling the Cedarbrooke Chateau property and a specific provision is included in the agreement allowing the Receiver to assign the occupancy agreement to a new purchaser.
- 3.8 Over the period of the last two years, the Receiver has met with residents from time to time, including attending resident council meetings and holding general update and question and answer meetings with the residents. In addition, the Receiver has had various telephone discussions with residents and their family members.

#### Insurance

- 3.9 Insurance coverage initially expired on June 24, 2011. The Receiver replaced the insurance coverage and has continued to renew it on an annual basis. The current coverage expires on April 1, 2014.

#### Repairs

- 3.10 The Receiver contacted a trade supplier responsible for certain construction related work at Cedarbrooke Chateau and after several months of on-going correspondence, the trade supplier agreed to perform certain repairs under product warranty related to the court yard area. The repairs involved removing and replacing the court yard area concrete and certain membrane material. In addition, the Receiver has addressed on-going repair matters as required in the day-to-day operations of Cedarbrooke Chateau.

4.0 **FINANCIAL POSITION AND OPERATIONS OF THE COMPANY**

- 4.1 Assets as at March 9, 2011 primarily comprised approximately \$333,000 of cash and the Cedarbrooke property (land and building).
- 4.2 Liabilities primarily included \$761,000 due to Canada Revenue Agency (net of an expected potential rebate of approximately \$400,000) relating to unremitted GST and long term debt due to 224. The Katz affidavit indicates that the total amount outstanding related to the secured loan due to 139 (subsequently assigned to 224) as at December 31, 2010 was \$31.1 million and per diem interest accrues at approximately \$4,900. Currently the secured debt to 224 totals approximately \$35 million, including accrued interest and excluding fees up until December 31, 2012.
- 4.3 The Receiver is working with the Cedarbrooke Management and Staff to continue to operate the complex as a going concern generally in the ordinary course. The Receiver met with two property management companies during early 2012 and has had several meetings with the respective parties. After several months, Diversicare Canada Management Services (“**Diversicare**”) was engaged in January 2013 to provide support to Cedarbrooke Management and Staff. The agreement entered into with Diversicare is for a term of one year and may be terminated at the Receiver’s sole discretion at any time with 15 days written notice.
- 4.4 To date, there have been no borrowings by the Receiver. Cash on hand, excluding rental deposits, as at February 28, 2013 is approximately \$1.35 million. The Receiver intends to pay \$1 million to 224 subject to Court approval. The disbursements noted below exclude professional fees of the Receiver and its legal counsel which have been paid for directly by the Lender.
- 4.5 Attached as Appendix A is a copy of the interim statement of the receipts and disbursements for the period March 9, 2011 to February 28, 2013 (“**Interim R&D**”). A summary of the receipts and disbursements is as follows:

**Summary of Interim Receipts and Disbursements for the period March 9, 2011 to February 28, 2013**  
**\$'000s**

<b>Receipts</b>	
Cash transfer of funds from Kingsway	\$ 333
Rental and other receipts	5,429
Lender advances for professional fees	324
Total	<u>\$ 6,086</u>
<b>Disbursements</b>	
Operating expenses	\$ 3,804
Insurance	83
Property taxes	517
Professional fees	334
Total	<u>\$ 4,738</u>
<b>Net cash flow</b>	<b>\$ 1,348</b>
<b>February 28, 2013 closing cash balance (excluding resident deposits)</b>	<b>\$ 1,348</b>

## 5.0 PROPOSED SALES PROCESS

5.1 The proposed timeline and general procedures for the Sales Process pending Court approval is as follows:

- a) The Receiver intends to circulate a business opportunity overview (“**Teaser**”) to in excess of 75 parties which the Receiver has identified as potentially interested purchasers (“**Target List**”). The parties comprise organizations who are real estate investment trusts with investments in seniors’ care related properties, other operators of seniors’ properties, investors such as private equity firms and a small number of realtors who have expressed an interest.
- b) It is expected that prior to the end of April 2013 the Teaser will be distributed and an advertisement will be published in the Globe and Mail national edition as well as one or more industry trade journals as determined by the Receiver;
- c) Potentially interested purchasers will be required to execute a “Non-disclosure, Confidentiality and Bidding Agreement” prior to receiving confidential information related to the Cedarbrooke property and operations;

- d) The letter of intent (“**LOI**”) deadline is expected to be May 31, 2013 or such other date as the Receiver may determine. Parties are required to submit a refundable deposit of \$250,000 along with the LOI;
- e) The final asset purchase agreement (“**APA**”) deadline is expected to be June 28, 2013 or such other date as the Receiver may determine. Parties are required to submit a deposit of 10% of the purchase price with the submission of the APA, which will be non-refundable if the Receiver accepts the offer. The APA template will be available on the Receiver’s website ([www.amcanadadocs.com/cedarbrooke](http://www.amcanadadocs.com/cedarbrooke)) subsequent to Court approval of the Sales Process;
- f) The Receiver is permitted to disclose to the Lender the Target List, the identity of the parties who have submitted LOIs and APAs as well as the details of the LOI and APA. If 224 is not paid in full or the highest offer is not acceptable to 224, then 224 may credit bid at any time; and
- g) The Receiver is not obligated to accept the highest or any bid. Any accepted bid is subject to Court approval.

#### Bankruptcy Status

- 5.2 As indicated in the First Report, in anticipation of an assignment in bankruptcy of 682, the Receiver commissioned and obtained an independent legal opinion from Gowling with respect to the security granted by 682 in favour of the Lender. The security opinion indicated that the Lender’s security and the mortgages created in favour of the Lender are valid and enforceable subject to the assumptions, qualification and limitations stated in the opinion.
- 5.3 On April 6, 2011, the Receiver filed a voluntary assignment in bankruptcy on behalf of 682 pursuant to the terms of the Receivership Order authorizing the Receiver to assign 682 into bankruptcy.
- 5.4 The first creditors’ meeting was held at the offices of A&M at 400 Burrard Street, Suite 1680, on April 25, 2011 at 9:00 a.m.
- 5.5 The bankruptcy estate has remained inactive except for one inspectors’ meeting which was held on December 30, 2011 primarily for the purposes of attending to the resignation and replacement of the two inspectors.



6.0 **PROFESSIONAL FEES**

6.1 Attached as Appendix “B” is a summary of the Receiver’s professional fees and disbursements for the period March 9, 2011 to December 31, 2012, which total \$692,937 including out of pocket disbursements of \$7,266 and applicable taxes of \$74,243. The Receiver’s statements of account have been approved by the Lender and \$418,554 was paid directly by the Lender. The Receiver paid \$274,383 from the receivership estate funds subsequent to receiving approval and funding from the Lender. Such costs will be added to the outstanding debt owed to 224.

6.2 Attached as Appendix “C” is a summary of the Receiver’s total professional fees by name, position, hourly rate and hours charged by the Receiver’s professional staff and details of its out of pocket disbursements for the period March 9, 2011 to December 31, 2012.

6.3 Attached as Appendix “D” is a summary of the professional fees and disbursements charged by Gowling for the period March 9, 2011 to December 31, 2012 for a total of \$93,040. Gowling’s statements of account have been approved by the Lender and \$33,327 was paid for directly by the Lender. The Receiver paid \$59,713 from the receivership estate funds to Gowling for payment of its statement of account.

6.4 The Receiver is of the view that its and Gowling’s professional fees and disbursements have been properly incurred and are fair and reasonable in the circumstances. The regular on-going administrative requirements over a period of two years have been extensive due to the level of the activities of the operations and increasing occupancy numbers.

6.5 The Receiver will continue to attend to the on-going operating activities, the proposed Sales Process and any other receivership matters. In this respect, A&M intends to provide subsequent report(s) to this Honourable Court on the administration of the receivership and any related realization efforts from time to time.

7.0 **RECEIVER’S RECOMMENDATION**

7.1 The Receiver respectfully requests that this Honourable Court make the following orders:

- a) approving the Sale Process;
- b) approving payments in excess of surplus cash required and as determined by the Receiver to the Lender up to a maximum amount of \$5 million or such other amount as approved by the Court;

- c) approving the activities and fees and disbursements, including taxes, of the Receiver and of its legal for the period ended December 31, 2012;

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All of which is respectfully submitted to this Honourable Court this 2nd day of April, 2013.

**Alvarez & Marsal Canada Inc., in its capacity as  
Receiver and Manager of 682202 B.C. Ltd.**



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Per: Pam K. Boparai  
Senior Vice President

**In the Matter of the Receivership of 682202 B.C. Ltd.  
Interim Statement of Receipts and Disbursements  
For the Period March 9, 2011 to February 28, 2013**

**Receipts**

Rental and other receipts	\$ 5,428,911
Transfers from Kingsway	333,021
Advances for professional fees from the Lender (Note 1)	324,388
	<u>\$ 6,086,321</u>

**Disbursements**

Wages, salaries and benefits	\$ 1,867,286
Food and dietary	705,696
Marketing	197,340
Supplies, maintenance and capital items	519,271
Utilities	354,140
Insurance	82,658
Administrative and other	121,735
Property taxes 2010, 2011 and 2012	516,641
Transfer of resident deposits (Note 2)	39,500
Receiver fees (Note 1)	274,383
Legal fees (Note 1)	59,713
	<u>\$ 4,738,364</u>

<b>Net Estate Cash Flow</b>	<b><u>\$ 1,347,957</u></b>
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Opening Estate Cash	-
<b>Closing Estate Cash Balance (Note 2)</b>	<b>\$ 1,347,957</b>

**Note 1**

The Lender made an advance payment of \$334,096 for funding professional fees, including \$274,383 paid to the Receiver and \$50,005 paid to the Receiver's legal counsel. The Receiver also paid directly from estate funds \$9,708 of legal fees. Statement of accounts after the period July 31, 2011 were paid directly by the Lender.

**Note 2**

As at March 31, 2011 resident deposits were \$39,500 and were transferred to a separate trust account. The closing estate cash balance excludes resident deposits of \$66,309 held in the separate trust account as at February 28, 2013.

682202 B.C. Ltd. d.b.a. Cedarbrooke Chateau  
Summary of the Receiver's Professional Fees and Disbursements  
For the period March 9, 2011 to December 31, 2012

Invoice Number	Period	Fees	Disbursements	HST	Total
1	March 9, 2011 to April 30, 2011	\$ 155,660.00	\$ 3,214.03	\$ 19,064.88	\$ 177,938.91 <sup>1</sup>
2	May 1, 2011 to May 31, 2011	45,987.50	202.80	5,542.84	51,733.14 <sup>1</sup>
3	June 1, 2011 to June 30, 2011	39,875.00	45.53	4,790.46	44,710.99 <sup>1</sup>
4	July 1, 2011 to July 31, 2011	25,900.00	925.30	3,219.04	30,044.34 <sup>2</sup>
5	August 1, 2011 to August 31, 2011	20,450.00	100.59	2,466.07	23,016.66 <sup>2</sup>
6	September 1, 2011 to December 1, 2011	53,737.50	1,157.79	6,587.43	61,482.72 <sup>2</sup>
7	January 1, 2012 to February 29, 2012	47,300.00	286.59	5,710.39	53,296.98 <sup>2</sup>
8	March 1, 2012 to March 31, 2012	23,000.00	249.40	2,789.93	26,039.33 <sup>2</sup>
9	April 1, 2012 to April 30, 2012	26,975.00	40.41	3,241.85	30,257.26 <sup>2</sup>
10	May 1, 2012 to May 31, 2012	17,350.00	76.57	2,091.19	19,517.76 <sup>2</sup>
11	June 1, 2012 to June 30, 2012	15,800.00	22.61	1,898.71	17,721.32 <sup>2</sup>
12	July 1, 2012 to July 31, 2012	23,275.00	106.51	2,805.78	26,187.29 <sup>2</sup>
13	August 1, 2012 to August 31, 2012	21,175.00	43.85	2,546.26	23,765.11 <sup>2</sup>
14	September 1, 2012 to September 30, 2012	20,525.00	363.28	2,506.59	23,394.87 <sup>2</sup>
15	October 1, 2012 to October 31, 2012	22,505.00	274.50	2,733.54	25,513.04 <sup>2</sup>
16	November 1, 2012 to November 30, 2012	24,712.50	-	2,965.50	27,678.00 <sup>2</sup>
17	December 1, 2012 to December 31, 2012	27,200.00	156.33	3,282.76	30,639.09 <sup>2</sup>
		\$ 611,427.50	\$ 7,266.09	\$ 74,243.23	\$ 692,936.82

Note 1: Fees paid by the Receiver from the Receivership estate funds.

Note 2: Fees paid by the Lender.

## APPENDIX C

**682202 B.C. Ltd. d.b.a. Cedarbrooke Chateau**  
**Summary of the Receiver's Professional Fees and Disbursements**  
**For the Period March 9, 2011 to December 31, 2012**

Alvarez & Marsal Canada Inc. Professionals		Hourly		Total
Name	Position	Rate	Hours	Fees
Todd Martin	Managing Director	\$ 625	58.1	\$ 36,312.50
Pam Boparai	Managing Director <sup>1</sup>	500	435.7	217,825.00
Callum Beveridge	Senior Director	450	1.5	675.00
Melanie MacKenzie	Director	375	137.4	51,525.00
Tom Powell	Director <sup>1</sup>	300	927.6	278,265.00
Vicki Chan	Senior Associate	250	18.5	4,625.00
Marianna Lee	Analyst	200	111.0	22,200.00
			<u>1689.7</u>	<u>611,427.50</u>
<b>Disbursements</b>				
Advertisement				80.73
Courier fees				2,625.48
Chargeable meal				91.73
Mileage, fuel, rental car, etc.				3,365.74
Photocopying				99.75
Other				799.97
Wireless telephone usage				<u>202.69</u>
				7,266.09
<b>HST</b>				<u>74,243.23</u>
<b>Total fees, out of pocket expenses and HST</b>				<u><u>\$ 692,936.82</u></u>

Note 1: Prior to November 1, 2012 Ms. Boparai and Mr. Powell were Senior Director and Manager, respectively.

**682202 B.C. Ltd. d.b.a. Cedarbrooke Chateau**  
**Summary of the Receiver and Manager's Canadian Legal Fees and Disbursements**  
**For the period ending December 31, 2012**

<b>Invoice Number</b>	<b>Invoice Date</b>	<b>Fees</b>	<b>Disbursements</b>	<b>HST</b>	<b>Total</b>
<b>Gowling Lafleur Henderson:</b>					
17230750	May 6, 2011	\$ 44,000.00	652.07	5,353.16	\$ 50,005.23
17280753	July 19, 2011	8,600.00	67.63	1,040.12	9,707.75
17349005	November 10, 2011	1,000.00	6.70	120.80	1,127.50
17402459	December 31, 2011	2,320.00	39.90	279.83	2,639.73
17453671	April 4, 2012	7,900.00	100.67	956.72	8,957.39
17474144	May 7, 2012	1,250.00	9.92	151.19	1,411.11
17517347	July 3, 2012	8,250.00	176.13	1,010.30	9,436.43
17517413	July 4, 2012	5,240.96	-	628.92	5,869.88
17609356	November 30, 2012	2,975.00	17.82	359.14	3,351.96
17648535	December 21, 2012	475.00	0.75	57.09	532.84
<b>\$</b>		<b>82,010.96</b>	<b>1,071.59</b>	<b>9,957.27</b>	<b>93,039.82</b>